



April 6, 2004

Highlights of Conference Report to Accompany H.R. 3108, the Pension Funding Equity Act of 2004

The Conference Report, H. Rept. 108-457, was filed on April 1, 2004. On April 2, 2004, the House passed the Conference Report by a vote of 336 to 69.

NOTEWORTHY

- H.R. 3108, the Pension Funding Equity Act of 2004, would provide two years of relief for all defined benefit pension plans facing required contribution levels that may be artificially inflated, as well as additional pension funding relief.
- The bill provides relief by replacing the discontinued 30-year Treasury bond interest rate with a rate based on a composite of long-term corporate bonds for years 2004 and 2005, reducing Deficit Reduction Contributions (DRC) for under-funded plans in the airline and steel industry, and deferring required payments for under-funded, multi-employer pension plans.
- Once a conference report has been filed, it may be called up at any time. There is no time limit on debate of a conference report, unless one has been imposed by a unanimous consent agreement.

Highlights

The Conference Report adopts slightly modified House language on the pension discount rate, adopts the Senate language creating multi-employer transparency requirements, and adopts modified Senate language on the two funding-relief provisions. It allows the airline and steel industry to waive 80 percent of their Deficit Reduction Contribution (DRC) in both 2004 and 2005 (whereas the Senate language allowed 80 percent in 2004 and 60 percent in 2005), and allows multi-employer plan relief for a smaller group of plans than those covered in the Senate bill.

Background

Pension plans are facing required contribution levels that may be artificially inflated. Current law requires traditional pension plans, which are defined benefit pension plans (as opposed to defined contribution pension plans, such as 401(k) plans), to make annual contributions that reflect the realistic liabilities the plan will face. In calculating these future liabilities, the law requires that an interest rate be applied based on the 30-year Treasury bond rate. The Department of Treasury has stopped issuing 30-year Treasury bonds, which has caused the interest rate they yield to significantly decline. A lower interest rate requires pension plans to make higher contributions because they are assuming a lower rate of return. When the 30-year Treasury bond was discontinued, Congress enacted a temporary rate (120 percent of the 30-year Treasury bond rate) for the years 2002 and 2003. That temporary rate fix has now expired. Therefore, many sponsors of pension plans will be required to make very large contributions as early as April 15, 2004. H.R. 3108 will put in place a more accurate interest rate for two years, 2004 and 2005, and provide additional funding relief to pension plans which have been particularly affected by the low interest rates and previous years' stock market decline.

H.R. 3108 was passed by the House of Representatives on October 8, 2003, by a vote of 397-2, and subsequently was referred to the Senate Finance Committee. The original House-passed bill simply replaced the interest rate for two years and provided no additional funding relief. H.R. 3108 was passed by the Senate on January 28, 2004 by a vote of 86 to 9, with an amendment adding DRC and multi-employer plan relief.

Bill Provisions

Title I- Section 101 – Pension Discount Rate

The Conference Report adopts the House language establishing a replacement interest rate in 2004 and 2005 for pension plans currently obligated to use the artificially low 30-year Treasury bond interest rate. For those two years, it replaces the discontinued 30-year Treasury bond interest rate with a rate based on a composite of conservatively invested, long-term corporate

bonds. The Treasury Secretary will select which bond indices will make up the rate and select a rate that is between 90 percent and 100 percent of that average. Utilizing Senate-passed language, the Conference Report permits the use of a higher deductible limit to encourage companies to fully fund single employer pension plans.

Section 102 - Deficit Reduction Contribution (DRC) Relief

The DRC is a payment required from pension plans that are significantly underfunded. A DRC payment is required in addition to the pension plan sponsor's normal annual contribution. The amount of the DRC payment is generally 30 percent of the unfunded liability (i.e., the amount required to get a plan 100-percent funded).

Like the Senate bill, the Conference Report provides DRC relief to the airline and the steel industries, and to the Transportation Communications Union staff plan. The relief is further restricted to plan sponsors that did not have to make DRC payments in 2000 (the theory being that sponsors which did make DRC payments in 2000 have chronic funding problems and should not be excused from meeting funding obligations). Plan sponsors that would normally be subject to DRC liability may elect instead to contribute only the *greater* of: 1) 20 percent of the DRC payment; or 2) the plan's expected current liability for benefits accruing during the year, minus the regular contribution. The most notable change from the Senate language is the waiver of 80 percent of the DRC for both years. The Senate language granted 80 percent relief in the first year and 60 percent relief in the second year on the basis that plans should be in better position to contribute in the second year of interest rate and DRC relief.

To prevent plans from becoming further underfunded during the two years of DRC relief, plan sponsors will be precluded from increasing benefits for those two years *except* for benefit increases required by collective bargaining agreements and increases which will be paid for by increased contributions. The Conference Report does not include the Senate requirement that pension plans which are 75-percent funded or less would not be allowed to increase benefits during the moratorium under even the aforementioned circumstances.

Like the Senate bill, plan sponsors will be required to notify plan participants that the sponsor has taken DRC relief within 30 days of filing that election, thereby putting the employees on notice that the plan sponsor is not fully funding the plan. Any plan which takes DRC relief must also report to the PBGC how much in DRC contributions the sponsor was spared, how long it would take the company to become fully funded if only regular, required contributions were made, and how the amount by which the plan is underfunded compares with the capitalization of the company.

Section 103 – Multi-Employer Plan Notice Requirements

The Conference Report adopts Senate provisions adding permanent transparency requirements to give plan participants and contributing employers annual, written notice about their multi-employer pension plan, including: the funding level; asset level; ramifications of underfunding a plan; and description of the guaranteed benefits under the plan.

Section 104 – Multi-Employer Plan Funding Relief

The House bill contained no provision relating to multi-employer relief. The Conference Report adopts a limited version of the Senate-passed provision, providing two years of funding relief for the most under-funded plans.

Multi-employer plans are utilized in industries where work is short-term or seasonal, such as construction, hospitality and trucking. Companies and unions negotiate for pension plan contributions to a pension plan operated by trustees appointed jointly by the union and participating employers. Multi-employer plans are not subject to the DRC. Instead, employers paying into a multi-employer plan are subject to excise taxes if the multi-employer plan is not fully funded. The level of the excise tax increases with each year below full funding, ranging from 5 percent to 100 percent of the underfunded amount. Additionally, each employer participating in multi-employer plans is liable for the full amount of underfunding, even when that is far more than they had agreed to pay.

The Conference Report would permit eligible plans to defer the amortization of 80 percent of their net experience losses in 2002 for up to 2 years, but would not defer regular contributions. Excise taxes for failing to fully fund the plan would be waived for two years.

The Conference Report limits plans eligible for this relief to plans which meet all of the following requirements: the plan had a net investment loss of at least 10 percent in 2002; the plan's actuary certifies that the plan will have an accumulated funding "deficiency" for any year beginning after June 30, 2003 and before July 1, 2006; the plan has not failed to make timely excise tax payments imposed by the IRS; the plan has not had a funding holiday for contributions in excess of 10 cents per hour; and the plan has not previously received funding waivers from the IRS.

Plans which elect to take this relief may not increase benefits *except* for benefit increases required by collective bargaining agreements and increases which will be paid for by increased contributions.

Title II - Section 201 – Adopts the Senate provision continuing a special rule for pension plans sponsored by a company engaged primarily in interurban or interstate passenger bus service. Such plans are considered fully funded, and therefore no DRC payments are required.

Section 202 – Adopts the Senate language on CNF's withdrawal liability. This provision will shift the burden of proof in the dispute between the multi-employer pension plan sponsor and the former parent company. Current law presumes the employer is liable by requiring the employer to prove, by a preponderance of the evidence, that the intent of the separation was not to evade withdrawal liability, and requires payments to begin on such a claim within 60 days of receiving the claim – which can mean that employers must begin making payments even before a determination of liability has been made.

Section 203 – States the Sense of the Congress that a permanent replacement discount rate and additional funding reform should be adopted.

Section 204 – Extends ability to transfer excess defined benefit plan assets to accounts covering retiree health liabilities until December 31, 2013.

Section 205 and 206 – The Conference Report would repeal section 809 of the Internal Revenue Code, relating to reductions in certain deductions for mutual life insurance companies. It would treat certain small insurance companies as tax-exempt organizations under section 501(c) of the Internal Revenue Code. This is similar to language included in the Senate’s amendment.

Section 207 – A new provision clarifies that the medical school application process is not subject to anti-trust laws.

Cost

The Joint Committee on Tax estimated that the bill will raise federal revenue by \$5 million over ten years.

Administration Position

Upon House passage of the Conference Report, the White House released the following statement:

“Today’s passage of legislation to protect pensions, on an overwhelming bipartisan 336-69 vote, is a victory for American workers who rely on these benefits for their retirement. The conferees have crafted responsible legislation which will fix an outmoded formula for determining employer contributions to pension plans, maintain the fiscal integrity of workers’ pensions, and ensure fairness to those employers who have responsibly funded their plans. For the sake of the millions of Americans who count on pensions, we urge the Senate to follow the House’s lead in passing this important legislation.” April 2, 2004.